This replevin of Ward & Co. came on subsequently to be tried at Nisi Prius, before Judge Woodward, of the Supreme Court of Pennsylvania. The following is the report of his charge:

Supreme Court of Pennsylvania, at Nisi Prius.

NATHAN T. CARRYL, WHO SURVIVED WM. J. WARD, LATE COPARTNERS UNDER THE FIRM OF WARD AND CO., *vs.* ROBERT TAYLOR.

1. A vessel seized, under process of foreign attachment in a State Court, was subsequently libelled in Admiralty for seamen's wages, and attached by the Marshal, while still in the custody of the Sheriff. The vessel was sold as perishable in both proceedings. Ruled, that as the common law jurisdiction had first attached, the title of the Sheriff's vendee was superior to that of the vendee of the Marshal.
2. *It seems* that maritime liens, such as for seamen's wages, are discharged by a sale on execution in Pennsylvania, and that the claimants are turned over to the fund in the hands of the Sheriff.

The facts of this case very fully appear in the charge of the Court, which was delivered, February 20th, 1854, by

WOODWARD, J.—Gentlemen of the jury: This case involves a question of property. It is an action of replevin, commenced in this Court by Nathan T. Carryl, who survived William J. Ward, late copartners, under the firm of Ward & Co., against Robert Taylor, to recover a barque or vessel, called the Royal Saxon, her boats, tackle, apparel and furniture. In Pennsylvania this action lies in all cases where one man claims goods or chattels in the possession of another, without regard to the manner in which the possession was obtained. It differs in some respects from all other actions. Generally, a plaintiff is not put in possession of the thing demanded, until after a decision is had in his favor; but in this action he may be, and frequently is put in possession of the chattel in dispute by the Sheriff, before any trial. The defendant may retain the chattel, and substitute for it a claim property bond, but if

such a bond, with satisfactory sureties, be not given, the Sheriff takes the chattel out of his possession, and delivers it to the plaintiff. This was the course here. Taylor offered no bond, and the Royal Saxon was turned over by the Sheriff to the plaintiff. But the defendant comes in and pleads "property" to the plaintiff's action —that is, he claims to have been the owner of the Royal Saxon, and that she should be restored to him together with damages for her detention. The plaintiff denies his claim, and thus they virtually change positions, as plaintiffs and defendants, though in form they stand on the record as when the suit was commenced. The vessel having been delivered to the plaintiff on the replevin, the verdict, if rendered for him, will be for such damages as he sustained by the defendant's detention of her up to the time of the execution of the writ of replevin. If rendered for the defendant, the verdict will be for a return of the vessel, and damages for the plaintiff's detention of her. The usual measure of damages in such cases, is the interest on the value of the chattel. And though in circumstances of aggravation, juries are sometimes permitted to give damages beyond the interest on the value, yet in this case I instruct you there are no facts in proof which would justify a verdict beyond the ordinary measure.

From this brief statement of the nature of the action, and of the relation of the parties to the subject matter in dispute, you will see that our duty is to test the titles of the respective parties to the Royal Saxon. Both parties claim under judicial sales—the plaintiff by virtue of a Sheriff's sale, made in the course of proceedings in foreign attachment, had in the Supreme Court of Pennsylvania; the defendant, by virtue of a Marshal's sale, made in pursuance of proceedings in Admiralty in the District Court of the United States, for the Eastern District of Pennsylvania.

Some few questions of fact, and various questions of law of considerable importance, grow out of these sales, and the proceedings that led to them, and counsel having discussed them with great energy and ability, it becomes my duty to decide the questions of law, and to submit for your decision the questions of fact, and that we may proceed orderly and intelligibly through the mass of mat-

ter, which has been placed before us, I propose to direct your attention: 1st, to the title of the plaintiff, and 2d, to the title of the defendant.

I. As to the plaintiff's title.

In the month of September, 1847, Robert McIntire, of the City of Londonderry, Ireland, was the owner of the vessel. Some time in that month she sailed from that port with James C. Ingleby as her master, a crew of ten seamen, and laden with passengers, for the port of Philadelphia, where she arrived safely on or about the 27th of October, 1847.

On the 4th day of November, 1847, McGee & Co., as creditors of Robert McIntire and William F. McIntire, issued out of the Supreme Court, their writ of foreign attachment against the McIntires, and on the 8th of November, 1847, the Sheriff returned that he had attached the barque Royal Saxon, and summoned Capt. Ingleby as garnishee.

On the 15th January, 1848, on the petition of James McGee, one of the attaching creditors, the Court granted a rule on the garnishee, to show cause why the vessel should not be sold, as chargeable and perishable property.

18th January, 1848, Robert Bell issued out of this Court his foreign attachment against Robert McIntire, attached the same vessel, and summoned Capt. Ingleby and Robert Taylor, this defendant, as garnishees, and on the 20th January, applied for and obtained a similar order of sale.

24th January, 1848, the garnishees appearing by Mr. Hood, their counsel, obtained a rule on the plaintiffs in these attachments, to show cause why the Royal Saxon should not be discharged from the custody of the Sheriff. The grounds of this motion will be stated hereafter. It is adverted to now not only to maintain the chronology of the proceedings, but because it may have some bearing on the question of possession, which you will have to pass on, and which, in due time, shall be fully developed.

29th January, this rule was discharged, and the rules for an order of sale in both the foreign attachments were made absolute.

31st January, an order of sale issued to the Sheriff in each case.

9th of February, Mr. Hood moves to rescind the order of sale, and same day, the motion denied.

21st February, the Sheriff returns the ship sold to Wm. J. Ward and Nathan T. Carryl, for $2,800.

Such is the derivation of the plaintiff's title.

The Supreme Court had jurisdiction in the premises, and the writs of foreign attachment were well issued and served. On the face of this record the plaintiff's title is regular and valid, and unless the defendant has made out a paramount right, the plaintiff's title must prevail.

Let us now trace the title of the defendant.

On the 21st day of January, 1848, the seamen on board the Royal Saxon, filed their libel in the District Court, sitting in Admiralty, for the balances of wages due them respectively, up to that date, and praying for the process of the Court, according to the course of Courts of Admiralty. Process, in the nature of an attachment, was thereupon awarded, to which the Marshal, on the same day, made return in these words: "Attached the barque Royal Saxon, and found a Sheriff's officer on board, claiming to have her in custody."

24th of January, 1848, the answer of James C. Ingleby, master of said barque, was put in, admitting the wages claimed by the libellants.

25th January, Captain Ingleby presented his petition to the District Court, setting forth that the foreign attachments of McGee & Co., and of Robert Bell, had been laid upon the vessel; that she had been libelled by the seamen and by Robert Taylor, her consignee; that he had himself made large advances on the credit of the barque and her owner; that her daily expenses were about $14, and that she was deprived of all opportunity to earn freight, being detained in custody. The petition was referred to a Commissioner, who reported on the 28th January, the facts set out in the petition, and that she was suffering, and would continue to suffer deterioration and damage, and recommending that she be sold.

On the 4th February, the Court made an interlocutory order for the sale of the vessel as chargeable and perishable property;[1] and in pursuance thereof, the Marshal, on the 15th of February, sold her at public sale to Robert Taylor, for $1600, which he paid into Court, and on the 22d February made and acknowledged his deed, in due form to Mr. Taylor, and next day put him into possession of the vessel, from whom she was retaken by the present writ of replevin. Such is the title of the defendant.

It was upon the ground of these proceedings in Admiralty, that Mr. Hood moved the Supreme Court on the 24th January, to discharge the vessel from the custody of the Sheriff. The rule obtained was discharged, as we have seen, on the 29th January.

It is now insisted on behalf of the defendant, that the Sheriff never obtained possession of the vessel under the foreign attachment, and that she was in the exclusive possession of the Marshal from the time his attachment was laid.

The process of foreign attachment has for its objects:

1. To compel the appearance of a non-resident debtor to the action of his creditors.

2. To obtain satisfaction out of the property attached for the debt claimed.

It is called *foreign* attachment because it issues against a party foreign to our jurisdiction, and for the further purpose of distinguishing it from domestic attachment, the qualities and consequences of which process differ in many essential points from foreign attachment. It may go against specific property of the defendant, whether in the hands of any person or not, or it may be directed against goods and chattels, rights and credits generally of the non-resident debtor. In this last case, the writ is executed by the service of a copy on the person named as garnishee, with notice annexed by the officer, that by virtue of the writ he attaches all and singular the goods and chattels of the defendant in his hands or possession, and summons him as garnishee. Our Act of Assembly of 13th June, 1836, contains provisions in regard to attaching real estate which it is not necessary to bring to your notice.

[1] Wall *vs.* The Royal Saxon, *ante*, p. 324.

But when the writ is directed against a *specific chattel*, it is the duty of the Sheriff to take it into custody. If he finds anybody in possession, he summons him as garnishee—a name which indicates that he is *warned* that the property is in the custody of the law. The 50th section of the Act of Assembly just referred to, provides that "the goods and effects of the defendant in the attachment, in the hands of the garnishee, shall, after such service, be bound by such writ, and be in the officer's power, *and if susceptible of seizure, or manual occupation, the officer shall proceed to secure the same*," *&c.*

The Sheriff was bound in this case to take the ship in custody. His return imports that he did—the motion of Mr. Hood on behalf of the garnishees on the 24th January, assumed that it was in the custody of the Sheriff—the return of the Marshal to the attachment out of the District Court asserts it—the petition of Capt. Ingleby re-asserts it—and Johnson, in his deposition, swears that the Sheriff put him in charge of the vessel, and that he remained there until the Sheriff's sale. That the Marshal's lock may have remained on the vessel after the termination of the proceedings for the forfeiture, the record of which is in evidence, is quite probable. Mr. Waln, who was counsel for the creditors, explains that while that proceeding was pending on behalf of the Government, he was willing to withdraw the Sheriff's officer to save expenses, but that he kept his eye on the proceeding, and before it was terminated ordered the man Johnson back into possession. If this question of possession had arisen on the proceedings for the forfeiture of the vessel, there might be some ground for alleging that, as against the Government, the Sheriff had lost the possession. But the libel on behalf of the Government was dismissed on the 6th of December, so that no question is in dispute between the Government and the plaintiff; and as against the libellants of the 21st January, the evidence of possession in the Sheriff is overwhelming. This question of possession, if question it can be called, is for the jury, but it is so fully proved by admissions from all sides, and by documentary as well as oral evidence, that no jury, and certainly not so intelligent a jury as I am now addressing, can be expected to hesitate or doubt about it.

If, then, the Sheriff, under process that required him to take possession of the *thing* in controversy, did take it and keep it, how did the Admiralty acquire jurisdiction over it? The proceedings in Admiralty are said to be purely *in rem*. Let this be granted. But before effective proceedings *in rem* can be had, in any court, the thing must be brought within the control of the court—there must be custody. But the Sheriff and the Marshal could not both have the custody of the vessel, any more than two magnitudes can occupy the same space at the same instant. The presence of the Marshal on the ship does not prove his custody, for the Sheriff's officer was there before him, and in such a conflict the law adjudges him in possession who has the best right. The Marshal did not dispossess nor attempt to dispossess the Sheriff's officer, but prudently retired himself, and informed the Court in his return that the vessel was in the custody of the Sheriff. After that, the Court of Admiralty could not proceed a step in respect to that vessel whilst she remained in the custody of an independent and competent jurisdiction. In *Hogan vs. Lucas*, 10 Peters, where the same chattels were claimed in execution both by the Marshal and the Sheriff—by the Marshal under common law process from the District Court of the United States, and by the Sheriff under similar process from a State Court—it was said by Justice McLean, delivering the opinion of the Supreme Court of the United States, "had the property remained in the possession of the Sheriff, under the first levy, it is clear the Marshal could not have taken it in execution, for the property could not be subject to two jurisdictions at the same time. The first levy, whether it were made under the Federal or State authority, withdraws the property from the reach of the process of the other. The Marshal or the Sheriff, as the case may be, by a levy acquires a special property in the goods, and may maintain an action for them. But if the same goods may be taken in execution at the same time by the Marshal and the Sheriff, does this special property vest in the one or the other, or both of them? No such case can exist—*property once levied on remains in the custody of the law, and it is not liable to be taken by another execution in the hands of a different officer, and especially by an officer*

acting under a different jurisdiction." These are obvious and salutary principles, and well calculated to avoid unseemly conflicts between Federal and State authorities; but they do not apply here, say the defendant's counsel, for reasons which I proceed now to notice. I am called on to charge that by the maritime law, mariners' wages have a priority over all other claims, and constitute a privileged lien upon the vessel in which they have been earned, and when this lien is sought to be enforced in the Admiralty by libel, and the Marshal has attached the vessel, it is in the exclusive custody of the Admiralty, and such exclusive custody exists, notwithstanding a previous foreign attachment from a court of law, served on the vessel by the Sheriff. The 8th and 9th points re-assert this doctrine in regard to the possession, and declare that the Marshal had the exclusive legal custody of the vessel, from the time he served his attachment till he sold her, and that the Sheriff's possession was ended, superseded, or at least suspended.

If these positions are well taken and can be sustained, they throw the Sheriff and the plaintiff's case overboard. Let us consider them.

Of the priority and the sacredness of the mariner's lien for wages there is no doubt. All the writers on maritime law assert it, and judges have tortured themselves to find language elevated and strong enough to describe it. What is said of it in Conkling's Admiralty Jurisdiction and Practice—that it is a sacred lien, and as long as a plank of the vessel or a fragment of the freight remains, the mariner is entitled to it in preference to all other persons, as a security for remuneration—is abundantly sustained by authority. But is it the law that a lien so universally acknowledged—so meritorious, and so paramount, must be asserted in a court of Admiralty, and cannot be recognized in a court of common law? Nay, more—that a court of common law is so incompetent to provide for such a lien, that when in the very act of converting the vessel into money, for the benefit of all in interest, its process must be arrested midway, its officers displaced, and the vessel be surrendered to the admiralty?

The defendant's propositions involve an affirmative to these questions. The case of the *Flora*, in 1 Haggard's R. 298, does not

sustain these propositions. The ship there had been levied in execution by the Sheriff, who had her in custody when she was arrested on the Admiralty process, but there seemed, says the Reporter, to have been an understanding that the vessel should remain in the actual custody and personal possession of the Sheriff's officer; and from a foot-note we learn that the counsel of the execution creditor, fearing a commission in bankruptcy, which might cut out his execution, *preferred* a sale by the Marshal instead of the Sheriff. Under this permissive sale he claimed and recovered his client's money on the execution. There was no assertion of the Sheriff's right to sell under the execution. It was yielded, for a reason that is specified, and how this case can be thought to sustain the principles contended for here, I confess myself unable to see.

The case of the *Spartan*, in Ware's R. 147, comes nearer to the point before us. The learned Judge of the District Court of Maine, ruled that the lien of the mariners attached to the freight and cargo of the vessel, and that they were not prevented from proceeding in admiralty by previous attachments pending in the State Court. But it is material to observe that we are not informed of the nature of these attachments, nor of the mode of executing them. If they required the Sheriff to take the cargo into actual custody, and he had done so, the case would resemble the present. And then we should have expected some reason of a more general and conclusive character, than that which was rendered for the ruling. The reason assigned was, that the mariner's lien was a privileged lien, but if, in Pennsylvania, such a lien can be recognized and satisfied in our State Courts, we cannot be expected to feel the force that is claimed for the reasoning of Judge Ware.

If to these cases be added the opinion of the learned Judge of the District Court for the Eastern District of Pennsylvania, we have the sum of the authorities relied on for the propositions of the defendant's counsel, for I lay out of view the dicta of Mr. Justice Story in the case in Sumner; dicta of a most learned Judge, but whose well known anxiety to enlarge the admiralty jurisdiction, betrayed him into opinions which his brethren on the bench of the Supreme Court of the United States have not been willing to adopt and follow.

When claims, so much in derogation of the common law, and so subversive of the dignity of State tribunals, are set up in behalf of the admiralty, they ought to be well supported, both by reason and authority. We have seen how they stand on authority. Let us next see what reasons are urged in their support.

It is urged as a distinction of great importance, that the admiralty process is a proceeding *in rem*, whilst that by foreign attachment is not. Foreign attachment has frequently been said to be in the nature of a proceeding *in rem*. I refer to *Phelps* vs. *Holker*, 1 Dal. 264; *Fitch* vs. *Ross*, 4 S. & R. 563; *Kilborn* vs. *Woodworth*, 5 Johnson, 37; *Jackson* vs. *Bank United States*, 10 Barr, 67; *Christmas* vs. *Biddle*, 1 H. 223; *Gocheneur's Executors* vs. *Hostetter*, 6 H. 418.

And when it goes against a specific chattel, of which the law requires, as I have shown, that the Sheriff should take manual custody, it is strictly a proceeding *in rem*. True, it may be dissolved, and turned into mere personal process by the defendants appearing and entering bail, but until this is done, and it was never done in the case before us, it does not lose its specific character. And the interlocutory order for the sale of the chattel attached as perishable, what is that but a proceeding *in rem?* In Admiralty it is claimed and admitted to be *in rem*. But if such an order is *in rem* in one Court, why is it not in the other? Some broader reason must be found for the alleged distinction, than the entitling of the process—a reason founded in the nature of legal principles is wanted—and none such have I seen or heard. Such a sale is not peculiar to the admiralty jurisdiction, but occurs in every Court where perishable property is taken in *custodia legis*. It is a duty to sell it, to save it. It is to the interest of nobody that it should go to waste, or be permitted to consume itself in the cost of keeping. Sold for the benefit of all concerned, the price it brings is substituted for the thing itself, and whatever rights existed in the thing, are recognized in respect to its equivalent. These are general principles, and I cannot doubt they were as applicable to the sale of the Royal Saxon made by the Sheriff, as to that made by the Marshal.

It may be added that foreign attachment when proceeded in as this was, is much more an action *in rem* than replevin, which has not generally been considered an action *in rem*. Yet Judge Grier, in the petitory suit of Taylor to recover possession of this ship against the plaintiff's replevin, reported in 1 Wallace, jr. 322, proceeds on the ground that replevin *is* an action *in rem*, and that the ship having been delivered to plaintiff by due process of law, the Admiralty had no jurisdiction to restore her to Taylor. He held that the title of the parties must be tried in the State Court. But, let it now be observed, if replevin out of a State Court can deliver a chattel beyond the reach of the Admiralty, *much rather* can foreign attachment, especially when attended with a sale of the chattel as perishable. Thus the authority of the District Court on the question before us, highly respected as it is, is more than answered—is reversed, by the Circuit Court. The *obiter dictum* of the latter as to Taylor's title, is entitled to just that measure of respect which is due to what a distinguished Judge says about a matter over which he solemnly decides he has no jurisdiction.

I feel authorized, in view of all that has been said, to decide that the foreign attachments laid and the orders of sale made by the Supreme Court, were proceedings *in rem*, as truly, and in exactly the same sense, as the similar proceedings in Admiralty are so denominated—and hence it follows, that, not the owner's interest in the vessel merely, but the vessel itself was sold by the Sheriff to the plaintiff in this action. And it follows also that the Sheriff's possession up to the time of sale, if actually continued, was in law the exclusive possession, and that so far from the Marshal having the exclusive possession, as I am called on to charge, he acquired no possession whatever, either in fact or law, until after the Sheriff's sale. A consequence of this last conclusion is, that the Admiralty proceeded without having acquired jurisdiction of the subject matter, for the property could not be the subject of two jurisdictions at the same time.

And this leads me to say, that I cannot reconcile my mind to the idea that under the Constitution and laws of the General Government, the Admiralty can extinguish the jurisdiction of the State

Courts, by laying its hand on the subject matter to which that jurisdiction has regularly attached. The States, and the people of the States, vested in the Federal Judiciary jurisdiction "in all cases of Admiralty and maritime jurisdiction," and by the Judiciary Act, Congress provided the District Courts for the exercise, in the first instance, of this jurisdiction. It is a civil law jurisdiction, the same, says Chancellor Kent, as the marine law of Europe, but it was never designed to come in conflict with the common law jurisdiction, which all of the original States recognized and retained. In England, from whence most of our legal principles have been derived, the Admiralty had long been under curb by statute as well as judicial decision, at the adoption of our Federal Constitution, and I suppose it was that *restrained jurisdiction* which our fathers intended to grant in and by the Federal Compact. If any man, lawyer or layman, has been misled by the extravagant doctrines advanced by the late Justice Story, in the case of *De Lovio* vs. *Boit*, 2 Gallison's R., 398; the opinions of Mr. Justice Johnson in *Ramsay* vs. *Allegre*, 12 Wheaton, 614, and of Justice Baldwin in the case of *Bains* vs. *The Schooner James and Catharine*, 1 Baldwin's R. 544, will be found excellent correctives.

Of one thing there is no doubt—that the trial by jury, the glory of the Common Law, but unknown to the Civil, was prized by our sturdy ancestors above all price, and whoever undertakes to demonstrate that they introduced into our political system an element that was subversive of this great bulwark of liberty—an overshadowing power to blight the Common Law jurisdiction of the country, with all its equitable principles and adaptive capacities, will find a work on hand that will demand all his diligence. Until this work be satisfactorily performed, I shall continue in the faith that the right of our Courts to attach a vessel within our jurisdiction, by process of foreign attachment, and proceed in due course to sell her to the highest and best bidder, cannot be interrupted, after the custody of the vessel is obtained, by the exercise of any judicial power vested in the Federal Government. If proceedings in Admiralty, at the instance of the government, for violation of the Navigation or Passenger Laws of the country, be an excepted case, it is an exception

which pertains to sovereignty, and does not qualify the rule as it applies *inter partes.*

There is no principle better settled in our jurisprudence, not even the privileged lien of seamen for their wages, than that where there is concurrent jurisdiction, the tribunal which first obtains possession of the subject matter, shall be left to determine it conclusively. This principle is essential to the integrity of our system of government, and to the harmonious movements of its various parts. The judiciary of Pennsylvania has uniformly observed this principle with scrupulous delicacy, and we have a right to insist that it be respected by the federal authorities. But, respected or not, it will be enforced on all proper occasions.

It is insisted, however, that this was not a case of concurrent jurisdiction. Unless the extravagant claims of the Admiralty to override the State Judiciary be admitted, the concurrence is beyond question. The creditors of McIntire had a right to attach the ship. The Supreme Court had jurisdiction. We proceeded *in rem*, and sold her. This divested *all* liens, for such is the effect of judicial sales in Pennsylvania. The mariners were then turned over to the fund. Of that the Court had possession, and were competent to recognize the maritime principle which gave them a preference, and distribution *pro tanto* could have been made as soon as an audit had ascertained the amounts due them. Mariners are not *compelled* to seek their remedy in admiralty, by proceeding against the ship. They have a three-fold remedy—against the ship—against the master—and against the owner—to which must be added, according to Judge Ware in the case of the Spartan—against the freight and cargo also. They may proceed in admiralty *in rem*, or *in personam*, or in common law courts in common law forms. It is creditable to the humanity of the civilized world that their remedies are so various and ample; but it would be a disgrace put upon us as a State tribunal, if we could not administer any one, of so multiform remedies. Suppose the estate of the owner, or the proceeds of the cargo to come into our Court by process of law—what is to hinder our paying the liens of the mariners as well as of other creditors. The Sheriff's sale, in this instance, was for all whom it might con-

cern—for the mariner, the material man—the bottomry creditor—the owner—the attaching creditor, and for whomsoever had rights in the ship.

Then it was a proceeding strictly concurrent with that in the Admiralty, and having first attached, all recognized principles, not only of comity and good manners, but of law, entitled this Court to proceed and finish what it had fairly begun. The schedule filed with the libel of the mariners, shows that the greater part of the wages claimed by them, accrued while the vessel was lying in this port, and after the foreign attachments were laid. These surely could have been paid out of the fund in Court as custody charges, just as Johnson, the Sheriff's officer, was paid for his services. But as to all their wages, I hold the Court was competent to ascertain and pay them without awaiting the final judgment in the foreign attachments. And from this it follows, that there is nothing in the argument drawn from the necessity for prompt and speedy redress to the mariner, for in this case, they could have got their money sooner in the Supreme Court than they did get it in the Admiralty. Ordinarily, however, I admit the Admiralty is better calculated to redress the seaman speedily than common law tribunals, but the interests of foreign commerce, unquestionably important as they are, must not be so magnified as to obscure other equal interests. American creditors have rights as well as foreign seamen, and the State Courts have powers to preserve, which are anterior to any Federal tribunal, and which, having never been delegated by the people, are not to be torn from us by judicial construction. The preservation of State authority, in its just rights, is a duty of paramount obligation. The welfare of the *whole people* depends on this, and no plea of inconvenience which may come from commerce or any other quarter, should induce us to neglect it.

I have said judicial sales in Pennsylvania divest all liens. This is true of real estate, except in the case of such mortgages as are protected by statute, and such liens as do not admit of ascertainment in moneys numbered. But it is universally true of chattels. Where the proceeding is not *in rem*, the sale only divests the *title* of the defendant, but it transfers that unencumbered to the purchaser.

Where the proceeding is *in rem*, it transfers the thing equally discharged from all liens. Such is the settled policy of our law, and it is a circumstance worthy of notice, that in the great case of the *Corporation* vs. *Wallace*, 3 Rawle, where these principles were discussed very thoroughly, the Court put this very case by way of illustration: "A ship," says Judge Huston, "may be mortgaged at sea, and all muniments of title, fairly given to the mortgagee: on her return, she may, for other debts, be libelled in the Admiralty, or before the mortgagee can take possession, may be levied in execution. When sold, according to law, the prior lien takes the money, whether that lien is seamen's wages, a bottomry bond or mortgage, and this whether sold by order of the Admiralty or on execution. I know of no case where once sold by process of a Court having jurisdiction, she has again been sold by process of the same Court, or of any other Court in the same country, for any debt of her former owner." This was said *arguendo*, and by way of illustration, it is true, but it was said by a Judge of great experience and acute observation, and is entitled to respect as evidence of the law.

On the whole, I am of opinion that there is not adequate ground either in the authorities or the reasons of the law for the distinctions and claims which are set up here in behalf of the Admiralty jurisdiction and process, and it results, of course that, if you find the Sheriff maintained his first possession of the vessel until he sold her, the plaintiff acquired a perfect title by the Sheriff's sale, and the defendant acquired none by the Marshal's. If the Sheriff had not the possession under his process, she was open to the process of the Admiralty, and the defendant's title would be best, but on this question of possession, the evidence is so nearly conclusive, that my mind cannot raise a doubt, and I have no expectation you will entertain any.

There are no equities in the case; each party stands on his legal title. There are circumstances in proof from which it is fair to presume, that each had notice of the proceedings under which the other claims, and so had the creditors under whom the respective parties claim. The attachment creditors did intervene in the Admiralty

case, and the mariners might have intervened in the foreign attachments. But the titles of the parties before us are unaffected by these circumstances, and depend on the principles discussed, and the question of possession submitted to you. If the plaintiff receives your verdict it should be for him generally, or at most, with only nominal damages. The defendant's possession of the vessel was under color of title, and for so short a time, that I do not consider this a case for damages against him.

I have now, gentlemen explained, if I have not justified, the views I entertain on the interesting questions which have been agitated in this cause. If any point on either side has not been substantially answered, in what has been said, it may be considered as ruled against the party propounding it.

The jury subsequently found for the Plaintiff, and assessed his damages at six cents.

In the District Court of the United States, for the Wisconsin District.

THE UNITED STATES EX. REL. B. S. GARLAND *vs.* TIMOTHY D. MORRIS.

1. The master of a fugitive slave, having him apprehended by the Marshal, in pursuance of a warrant, cannot be arrested for assault and battery committed on such fugitive, while making the arrest, in aid and at the request of the Marshal, before the final hearing and order of the Judge.
2. A warrant for the apprehension of a fugitive slave is in full force until the final hearing and order; and after a rescue, a fresh pursuit may be made by the Marshal and owner with the same warrant.
3. The service of process under the United States cannot be interrupted by the arrest of the officer in person aiding him in serving such process; or in any other manner, by means of State process or warrants.

MILLER, J.—The relator, a citizen of the State of Missouri, obtained a warrant upon affidavit, for the apprehension of Joshua Glover, whom he alleged to be his slave for life, and as such to owe him service and labor in the State of Missouri, whence he escaped. The warrant was issued to the Marshal, who arrested the fugitive,